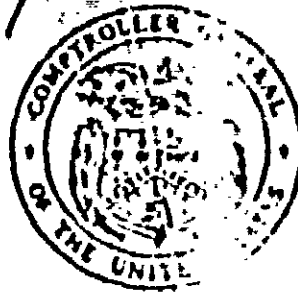


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-205218

DATE: March 19, 1982

MATTER OF: Chief Master Sergeant Douglas R. Swartout,
USAF, Retired

- DIGEST:**
1. A retired Air Force chief master sergeant requests reimbursement for excess transportation costs deducted from his retirement pay. The costs were incurred when he shipped his mobile home from his duty station in Massachusetts, to his home in Michigan. The claim is denied since debts of enlisted members of the Air Force, which accrued during active duty, may not be remitted or cancelled by the Secretary of the Air Force under 10 U.S.C. § 9837(d), after the member has retired.
 2. GAO has no authority to remit debts or reimburse claimants for the collection of debts validly owed to and collected by the Air Force from retired members who incurred excess transportation costs while on active duty.
 3. Member was advised that he would have to pay the entire amount of his debt to the Air Force before he could file a claim with GAO. The information was erroneous since this Office has the authority to settle and adjust all claims and demands by the Government or against it and those claims which contain elements of doubt as to the amount and validity of the Government's claim are required to be submitted to GAO.
 4. Member may be reimbursed for a wrecker service charge where the statement of a witness corroborates his contention that the carrier was negligent and the charges should not have been billed to and paid by the Government.

Chief Master Sergeant Douglas R. Swartout, USAF (Retired), has requested reconsideration of the denial by our Claims Group (Z-2817883) of his claim for reimbursement of \$1,228.60, which was deducted from his retirement pay by the Air Force. The deduction was based on the Air Force's conclusion that, prior to his discharge, Sergeant Swartout had incurred that amount of excess transportation costs when he shipped his mobile home from Hanscom Air Force Base in Massachusetts to Marquette, Michigan, in June 1976.

The issue we are asked to decide is whether an enlisted member of the Air Force may have a debt remitted under the provisions of 10 U.S.C. § 9837(d) (1976), after he has retired. The decision of our Claims Group is affirmed because relief can only be granted to enlisted members on active duty.

In January 1972, Sergeant Swartout was assigned to Hanscom Air Force Base (Hanscom) in Massachusetts. At that time, he arranged for his family, living in Marquette, Michigan, to join him in Massachusetts. Due to a housing shortage, Sergeant Swartout purchased a mobile home for his family to live in. In December 1972, he was transferred by the Air Force to Thailand for 18 months. For this reason, he arranged for his family and mobile home to be moved to Marquette, Michigan, at Government expense. However, upon arrival in Thailand, Sergeant Swartout discovered that his transfer there had been a mistake. There was no work for him in Thailand. In January 1974, Sergeant Swartout was transferred back to Hanscom. Upon his return, he arranged for his family and mobile home to be moved back from Michigan to Massachusetts, again at Government expense.

Sometime after this move, the Air Force determined that Sergeant Swartout had incurred excess transportation costs in the shipment of his mobile home from Hanscom to Michigan in December 1972, and back again in January 1974. The Air Force based this conclusion upon the application

of 1 Joint Travel Regulations (JTR) paragraph M10004-3 (change 269, July 1, 1975), which, at that time, limited allowances for the shipping of mobile homes to 74 cents per mile. The 74-cent mileage allowance was expressly mandated by the provisions of 37 U.S.C. § 409, as it then read. In this case, the Air Force's calculations indicated that Sergeant Swartout owed the Government \$1,496.73. When informed of this debt, Sergeant Swartout requested a remission of his debt under 10 U.S.C. § 9837(d), which authorizes the Secretary of the Air Force to remit or cancel debts owed to the Air Force by enlisted members of the Air Force, if the Secretary considers it to be in the best interest of the United States. According to the statute, the Secretary may remit any such debts "remaining unpaid before, or at the time of, that member's honorable discharge." In October 1975, the Secretary of the Air Force granted Sergeant Swartout's request.

In June 1976, Sergeant Swartout learned that he might be reassigned to Korea. Consequently, he applied for retirement. At the same time, he moved his family and mobile home from Hanscom back to Michigan, again at Government expense. In December 1976, Sergeant Swartout was discharged from the Air Force and joined his family in Michigan. However, in April 1977, Sergeant Swartout was informed that, in moving his mobile home from Hanscom to Michigan in June 1976, he had incurred an additional \$1,228.60 in excess transportation costs. This excess was also calculated using the 74-cent mileage limit. Once again he applied for remission, but this time his request was denied.

The Air Force advised Sergeant Swartout that this debt was not eligible for remission under 10 U.S.C. § 9837(d), because he was no longer on active duty. In essence, the Air Force stated that the request was untimely. Sergeant Swartout was informed by several officials of the Air Force that he could appeal its determination of his indebtedness to the Air Force Accounting and Finance Center, and then to this Office. However, they stated that he first had to pay the entire amount of his debt to the Air Force by means of deductions from his monthly retirement pay. Now that all

of the excess costs have been repaid to the the Air Force, Sergeant Swartout seeks a refund of the money deducted from his retirement pay.

The information provided by the Air Force to Sergeant Swartout that he must pay an alleged debt before he may appeal it to GAO was apparently based on the Air Force's interpretation of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Claims. We wish to point out that that information was erroneous. The General Accounting Office has the authority to settle and adjust all claims and demands by the Government of the United States or against it. 31 U.S.C. § 71 (1976). Those claims by the United States which contain elements of doubt as to the amount and validity of the Government's claim are required to be submitted to this Office for consideration. See Title 4, Policy and Procedures Manual for Guidance of Federal Agencies, § 3.2. The initial amount withheld by setoff against Sergeant Swartout's retirement account would also constitute a claim against the United States which could be immediately appealed to GAO. See 58 Comp. Gen. 501, 506 (1979). A delay in filing a claim with this Office until after the debt is collected could have a deleterious effect since a claim must be filed in this Office within 6 years after the date it first accrued or be forever barred. 31 U.S.C. § 71a (1976). Similarly, a claimant could be denied access to the Federal courts. 28 U.S.C. §§ 2401(a), 2501 (1976).

Sergeant Swartout contends that the excess transportation costs deducted from his retirement pay were a direct result of his allegedly erroneous transfer to Thailand and should be treated no differently than the excess transportation costs which were remitted in October 1975. Therefore, in his view, he is entitled to remission (and now, reimbursement) of the deducted excess transportation costs. Sergeant Swartout fails to perceive any significance in the fact that he is no longer on active duty, since the debt occurred 6 months before his discharge. In any event, Sergeant Swartout

maintains that it is unfair to bar his request for remission as untimely. Since the Air Force failed to make a demand of him until 10 months after the shipment (which was 4 months after his discharge), he submits that it was impossible for him to request a remission prior to his discharge. Sergeant Swartout also challenges two items which were charged to him by the Air Force. These items include tire replacement and wrecking service fees, which the claimant contends should be attributed to the carrier.

We disagree with Sergeant Swartout's assertion that the disputed excess costs were a direct result of the Air Force's allegedly erroneous transfer of him to Thailand. In fact, those costs had no direct or indirect causal tie to his Thailand assignment. This is so because he, his family and his mobile home were all in Massachusetts at the initiation of his transfer to Thailand. Upon his return from Thailand, he, his family and his mobile home were all returned to Massachusetts, completely at Government expense. Aside from the passage of time and the frustration of the transfer, the status quo had been restored. It was as if the Thailand assignment had never occurred when, in anticipation of his retirement, Sergeant Swartout chose to ship his family and his mobile home from Massachusetts to Michigan in June 1976.

In our opinion, this claim arose, in substantial part, because of the 74-cent ceiling on allowances for the shipping of mobile homes, which until recently was contained in 37 U.S.C. § 409 (1976). In 1980, Congress amended 37 U.S.C. § 409 to eliminate the 74-cent ceiling and to provide, instead, that the maximum allowance for shipping of mobile homes is to be set by the Secretary concerned, and may not exceed the maximum allowance for the shipping of a member's baggage and household effects limited to what it would have cost the Government to ship the member's maximum authorized weight allowance. Pub. L. No. 96-342, Title VIII, § 808(a)(1) (September 8, 1980), 94 Stat. 1096. However, that amendment provides that it only applies to the transportation of mobile homes which is completed after September 30, 1980. Id. at § 808(b).

The decision to remit debts owed by Air Force enlisted military personnel to the United States is committed to the discretion of the Secretary of the Air Force, 10 U.S.C. § 9837(d) (1976). There is no statutory authority by which this Office is authorized to remit or compel the remission of the indebtedness of a member of the Armed Forces, no matter how reasonable the claim may be. With regard to the fact that the claimant has retired from the Air Force and is no longer on active duty, we have held in previous cases that the plain language of 10 U.S.C. § 9837(d) confers no authority upon the Secretary to grant remissions after a member's discharge. We found in those decisions that it was the purpose of that legislation to relieve enlisted personnel of the burden, while on active duty, of repaying large sums of money in satisfaction of debts to the Government. 39 Comp. Gen. 415 (1959); B-187078, March 28, 1977. The fact that Sergeant Swartout was on active duty when the claim first accrued has no bearing since the Secretary of the Air Force could not have remitted this debt after Sergeant Swartout had retired. There is also no authority for this Office to refund an amount which was properly owed and collected from a member of the Armed Forces who incurred transportation costs in excess of the statutory ceiling. B-171186, November 30, 1970. Accordingly, the Claims Group's denial of his request for reimbursement of the deducted excess costs was not in error.

As to Sergeant Swartout's assertion that the carrier is liable for the costs of the purchase of a replacement tire and the use of a wrecking service to load his mobile home on the towing truck, we note that the Air Force does not appear to have considered this claim on its merits. As to the wrecker service charge of \$54.30, the record contains the statement of a witness which corroborates Sergeant Swartout's contention that the carrier was negligent and the charges should not have been billed to and paid by the Government. Thus, Sergeant Swartout may be reimbursed this amount. See B-190585, March 10, 1978. Sergeant Swartout also contends that the amount of \$35 paid for a new tire is in error since he does not have a new tire on the mobile home and he gave the driver

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four spare tires, prior to departure, for which he received four blown tires in return. We note in this case that the carrier billed the Government for five tire changes and one tire at \$35. The low price of the tire could indicate that a used tire was purchased and the carrier's voucher indicates five tire changes. We can only assume at this late date that the carrier's voucher was supported by proper receipts and was correctly billed and paid. Unless Sergeant Swartout can produce evidence to the contrary, the tire expense should not be reimbursed.

In view of the above discussion, the decision of our Claims Group is affirmed.

for *Milton J. Fowler*
Comptroller General
of the United States